

Panaji, 14th July, 1977 (Asadha 23, 1899)

SERIES I No. 15

OFFICIAL GAZETTE



GOVERNMENT OF GOA, DAMAN AND DIU

GOVERNMENT OF GOA, DAMAN AND DIU

Department of Personnel and Administrative Reforms

Notification

5-3-74-Div. I.

In exercise of the powers conferred on him in the Schedule (Part III, Sr. No. XV(iii) to the C. C. S.

(C.C.A.) Rules, 1965 as approved by the Government of India, Cabinet Secretariat, Department of Personnel, New Delhi, the Administrator of the Union Territory of Goa, Daman and Diu hereby makes the following entries in place of the existing entries against Sr. No. 10 of the Schedule appended to the Notification No. GAD-EST-9364(2) dated 30-3-1966 published in Official Gazette Series I, No. 2 dated 14-4-1966 regarding the appointing, disciplinary and appellate authorities under the said rules for Group 'C' and Group 'D' post in the Administration of the Union Territory of Goa, Daman and Diu.

Sr. No.	Description of Service	Appointing Authority	Authority competent to impose penalties which it may impose (with reference to numbers in Rule 11)		Appellate Authority
			Authority	Penalties	
1	2	3	4	5	6
10	(a) Department of Tourism	Director of Tourism	Director of Tourism	All	Secretary in charge
	(b) Department of Information	Director of Information	Director of Information	All	Secretary in charge

By order and in the name of the Administrator of Goa, Daman and Diu.

Chaman Lal, Joint Secretary.

Panaji, 30th June, 1977.

Law and Judiciary Department

Notification

LD/2707/II/77

The following Central Act The Caltex [Acquisition of Shares of Caltex Oil Refining (India) Limited and of the Undertakings in India of Caltex (India) Limited] Act, 1977 (Act No. 17 of 1977) which was recently passed by the Parliament and assented to by the President of India on 23-4-1977 and published in the Gazette of India Part II, Section I dated 23-4-1977 is hereby republished for general information of the public.

B. S. Subbanna, Under Secretary (Law).

Panaji, 6th June, 1977.

The Caltex [Acquisition of Shares of Caltex Oil Refining (India) Limited and of the Undertakings in India of Caltex (India) Limited] Act, 1977

AN

ACT

to provide, in the public interest, for the acquisition of the shares of Caltex Oil Refining (India) Limited and for the acquisition and transfer of the right, title and interest of Caltex (India) Limited in relation to its undertakings in India and thereby to secure that the ownership and control of the petroleum products produced by the Caltex Oil Refining (India) Limited, and marketed and distributed by the said undertakings, in India, are so distributed as best to subserve the common good.

Whereas the Caltex Petroleum Corporation (a foreign company) has at present the ownership of,

and control over, a significant portion of the petroleum products produced, marketed and distributed in India by reason of the fact that one of its subsidiaries, namely, the Caltex Oil Refining (India) Limited (an Indian company), is carrying on the business of refining crude oil and producing petroleum products in India and another of its subsidiaries, namely, the Caltex (India) Limited (a foreign company), is carrying on through its undertakings in India the business of marketing and distributing petroleum products;

And Whereas it is expedient in the public interest that the shares of the said Caltex Oil Refining (India) Limited and the undertakings in India of the said Caltex (India) Limited should be acquired;

And Whereas such acquisition is for giving effect to the policy of the State towards securing the principle specified in clause (b) of article 39 of the Constitution as the ownership and control of the material resources of the community, to wit the petroleum products produced by the said Caltex Oil Refining (India) Limited and marketed and distributed by the undertakings of the said Caltex (India) Limited, in India, would by reason of such acquisition become vested in the State and thereby so distributed as best to subserve the common good.

Be it enacted by Parliament in the Twenty-eighth Year of the Republic of India as follows:—

CHAPTER I

Preliminary

1. *Short title and commencement.*—(1) This Act may be called the Caltex [Acquisition of Shares of Caltex Oil Refining (India) Limited and of the Undertakings in India of Caltex (India) Limited] Act, 1977.

(2) It shall be deemed to have come into force on the 30th day of December, 1976.

2. *Definitions.*—In this Act, unless the context otherwise requires,—

(a) “appointed day” means the 30th day of December, 1976;

(b) “Caltex (India)” means the Caltex (India) Limited, a foreign company within the meaning of section 591 of the Companies Act, 1956, incorporated in Bahamas Islands and having its registered office in the City of Nassau in the Island of New Providence;

(c) “Caltex Oil Refining” means the Caltex Oil Refining (India) Limited, being a company as defined in the Companies Act, 1956, and having its registered office at Shoorji Vallabhdass Marg, Bombay;

(d) “Caltex Petroleum” means the Caltex Petroleum Corporation, a company incorporated in the State of Delaware in the United States of America and having its principal business office at 380, Madison Avenue, New York, United States of America;

(e) “Government company” means a company as defined in section 617 of the Companies Act, 1956;

(f) “notification” means a notification published in the Official Gazette;

(g) “prescribed” means prescribed by rules made under this Act.

CHAPTER II

Acquisition of the shares of Caltex Oil Refining

3. *Transfer and vesting in the Central Government of shares of Caltex Oil Refining.*—(1) On the appointed day, all the shares in the capital of Caltex Oil Refining shall, by virtue of this Act, stand transferred to, and vested in, the Central Government.

(2) All the shares which have vested in the Central Government under sub-section (1) shall, by force of such vesting, be freed and discharged of all trusts, liabilities, obligations, mortgages, charges, liens and other encumbrances affecting them.

(3) Any dividend payable by Caltex Oil Refining in respect of any period beginning from the 1st day of January, 1976, shall be payable to the Central Government.

(4) *Management of Caltex Oil Refining.*—(1) For the purpose of enabling Caltex Oil Refining to function as a Government company, the Central Government may, by notification, make such amendments in the memorandum and articles of association of that company and such other provisions as it may consider necessary.

(2) Any amendments in the memorandum and articles of association of Caltex Oil Refining and any other provisions made under sub-section (1), shall have effect notwithstanding anything contained in the Companies Act, 1956.

1 of 1956.

CHAPTER III

Acquisition of the undertakings of Caltex (India) in India

5. *Transfer and vesting in the Central Government of the undertakings of Caltex (India) in India.*—On the appointed day, the right, title and interest of Caltex (India) in relation to its undertakings in India shall, by virtue of this Act, stand transferred to, and vested in, the Central Government.

6. *General effect of vesting.*—(1) The undertakings of Caltex (India) referred to in section 5 shall be deemed to include all assets, rights, powers, authorities and privileges and all property, movable and immovable, cash balances, reserve funds, book debts, investments and all other rights and interests in, or arising out of, such property as were, immediately before the appointed day, in the ownership, possession, power or control of Caltex (India), in relation to its undertakings in India, and all books of account, registers, records and all other documents of whatever nature relating thereto and shall also be deemed to include all borrowings, liabilities (including the liability for the payment of any pension and other pensionary benefits to the persons employed in relation to its undertakings in India) and obligations of whatever kind then subsisting of Caltex (India) in relation to its undertakings in India.

Provided that remittances outside India of any money for the payment of pension or other pension-

1 of 1956.

1 of 1956.

1 of 1956.

nary benefits shall be subject to the rules and regulations for the time being in force in relation to such remittances.

(2) The profits earned by Caltex (India) in relation to its undertakings in India from the 1st day of January, 1976 shall be payable to the Central Government.

(3) Unless otherwise expressly provided by this Act, all deeds, bonds, agreements, powers of attorney, grants of legal representation and other instruments of whatever nature in relation to the undertakings of Caltex (India) in India subsisting or having effect immediately before the appointed day, and to which Caltex (India) is a party or which are in favour of Caltex (India) shall be of as full force and effect against or in favour of the Central Government and may be enforced or acted as fully and effectually as if in the place of Caltex (India), the Central Government had been a party thereto or as if they had been issued in favour of the Central Government.

(4) If on the appointed day, any suit, appeal or other proceeding of whatever nature in relation to the undertakings of Caltex (India) in India, which have been transferred to, and vested in, the Central Government under section 5, is pending by or against Caltex (India), the same shall not abate, be discontinued or be, in any way, prejudicially affected by reason of the transfer of the undertakings of Caltex (India) in India or of anything contained in this Act but the suit, appeal or other proceeding may be continued, prosecuted and enforced by or against the Central Government.

7. Special provisions as to certain rights and interests held by Caltex (India) before the appointed day.

— (1) Every right or interest in respect of any property in India (including a right under any lease or under any right of tenancy or any right under any arrangement to secure any premises for any purpose), which Caltex (India) held immediately before the appointed day, shall, notwithstanding anything contained in any other law or in any agreement or instrument relating to such right or interest, vest in, and be held by, the Central Government on and after the appointed day on the same terms and conditions on which Caltex (India) would have held it, if no negotiations had taken place for the acquisition by the Central Government of the undertakings of Caltex (India) in India or, as the case may be, if this Act had not been passed.

(2) If at any time after the 2nd day of February, 1974 (being the date on which the Central Government's policy for acquiring undertakings engaged in the production, marketing or distribution of petroleum products was made known) and before the commencement of this Act, Caltex (India) surrendered or otherwise relinquished any right or interest in respect of any property in India (including a right under any lease or under any right of tenancy or a right under any arrangement to secure any premises for any purpose), then, for the purposes of this Act, notwithstanding anything contained in any other law or in any agreement or instrument relating to such right or interest, the Central Government shall, on and after the appointed day, be entitled to such right or interest on the same terms and conditions on which Caltex (India) would have been entitled to such right or interest if it had not

surrendered or otherwise relinquished such right or interest and this Act had not been passed:

Provided that nothing in this sub-section shall apply to any right or interest surrendered or otherwise relinquished by Caltex (India) before the commencement of this Act for sufficient monetary consideration.

(3) On the expiry of the term of any lease, tenancy or arrangement referred to in sub-section (1) or sub-section (2), such lease or tenancy or arrangement shall, if so desired by the Central Government, be renewed or continued, so far as may be, on the same terms and conditions on which the lease or tenancy or arrangement was originally granted or entered into.

8. *Removal of doubts.* — (1) For the removal of doubts, it is hereby declared that the provisions of sections 5, 6 and 7 shall apply to the extent to which any property appertains to the business carried on by Caltex (India) in India; and to the rights and powers acquired, and to debts, liabilities and obligations incurred, and to contracts, agreements and other instruments made, by Caltex (India) in India, and to legal proceedings relating to those matters pending in any court or tribunal in India.

(2) If any question arises as to whether any property appertained, immediately before the appointed day, to any business of Caltex (India) in India; or whether any rights, powers, debts, liabilities or obligations were acquired or incurred or any contract, agreement or other instrument was made by Caltex (India) for the purposes of its business in India, or whether any documents relate to those purposes, or whether the provisions of section 7 apply in relation to any property, the question shall be referred to the Central Government which shall, after giving a reasonable opportunity of being heard to the persons interested in the matter, decide it in such manner as it may think fit.

9. *Power of Central Government to direct vesting of the undertakings of Caltex (India) in a Government company.* — (1) Notwithstanding anything contained in sections 5, 6 and 7, the Central Government may, if it is satisfied that a Government company is willing to comply, or has complied, with such terms and conditions as that Government may think fit to impose, direct by notification, that the right, title and interest and the liabilities of Caltex (India) in relation to any of its undertakings in India shall, instead of continuing to vest in the Central Government, vest in the Government company either on the date of the notification or on such earlier or later date (not being a date earlier than the appointed day) as may be specified in the notification.

(2) When the right, title and interest and the liabilities of Caltex (India) in relation to its undertakings in India vest in a Government company under sub-section (1), all the rights and liabilities of the Central Government in relation to such undertakings shall, on and from the date of such vesting, be deemed to have become the rights and liabilities, respectively, of the Government company.

(3) The provisions of sections 5, 6 and 7 shall, so far as may be, apply in relation to such Government company as they apply in relation to the Central Government and for this purpose references therein

to the "Central Government" shall be construed as references to such Government company.

CHAPTER IV

Payment of Amount

10. *Payment of amount to Caltex Petroleum and Caltex (India).* — (1) For the transfer to, and vesting in, the Central Government under section 3 of the shares of Caltex Oil Refining and for the transfer to, and vesting in, the Central Government under section 5 of the right, title and interest of Caltex (India) in relation to its undertakings in India, there shall be paid by the Central Government an aggregate amount of rupees thirteen crores to Caltex Petroleum and Caltex (India) in the proportions agreed to by them.

(2) The amount specified in sub-section (1) shall carry interest free of income-tax at the rate of eight per cent. per annum from the 1st day of January, 1977, till the date of payment in the manner specified in the Schedule.

(3) The amounts payable under sub-section (1) and (2) shall be payable in instalments in accordance with the provisions of the Schedule.

(4) In addition to the amounts mentioned in sub-section (1) and (2), the Central Government shall pay to Caltex Petroleum or Caltex (India), as the case may be, such amount in Indian currency as may be required by the said companies to pay towards all taxes in India on the amounts payable under the said sub-sections and all other taxes in India the liability for the payment of which arises directly on the transfer to, and vesting in, the Central Government of the shares of Caltex Oil Refining and of the undertakings of Caltex (India) in India.

CHAPTER V

Provisions relating to employees

11. *Transfer of service of existing employees of Caltex (India), etc.* — (1) Every whole-time officer or other employee of Caltex (India) who was, immediately before the appointed day, employed by Caltex (India) in connection with its undertakings in India, and every whole-time officer or other employee of Caltex (India) who was, immediately before the appointed day, temporarily holding any assignment outside India shall, on the appointed day, become an officer or other employee, as the case may be, of the Central Government or the Government company (hereinafter referred to as the successor Government company) in which the right, title and interest of Caltex (India) in relation to its undertakings in India have vested under this Act and shall hold office or service under the Central Government or the successor Government company, as the case may be, on the same terms and conditions and with the same rights to pension, gratuity and other matters as would have been admissible to him if there had been no such vesting and shall continue to do so unless and until his employment under the Central Government or the successor Government company is duly terminated or until his remuneration and conditions of service are duly altered by the Central Government or the successor Government company.

(2) Subject to rules made in this behalf under section 23, every whole-time officer or other employee

of Caltex Oil Refining who was, immediately before the appointed day, employed by Caltex Oil Refining in India, and every whole-time officer or other employee of Caltex Oil Refining who was, immediately before the appointed day, temporarily holding any assignment outside India shall, on and from that day, continue to be an officer or other employee of Caltex Oil Refining on the same terms and conditions and with the same rights to pension, gratuity and other matters as are admissible to him immediately before that day and shall continue to hold such office unless and until his employment under the Caltex Oil Refining is duly terminated or until his remuneration and conditions of service are duly altered by that company.

(3) If any question arises as to whether any person was a whole-time officer or other employee of Caltex (India), or as to whether any officer or other employee was employed wholly or mainly in connection with the undertakings of Caltex (India) in India immediately before the appointed day, or whether any whole-time officer or other employee of Caltex (India) was temporarily holding any assignment outside India, the question shall be referred, within a period of two years from the appointed day, to the Central Government which shall, after giving a reasonable opportunity of being heard to the person concerned in the matter, decide it in such manner as it thinks fit and such decision shall be final.

(4) Notwithstanding anything contained in the Industrial Disputes Act, 1947, ^{14 of 1947.} the Payment of Gratuity Act, 1972, ^{39 of 1972.} or in any other law for the time being in force, the transfer of the services of any officer or other employee under sub-section (1) shall not entitle any such officer or other employee to any compensation or gratuity under those Acts or such other law, and no such claim shall be entertained by any court, tribunal or other authority.

12. *Provident, superannuation, welfare fund etc.* — (1) Where a provident, superannuation, welfare or other fund has been established by Caltex (India) for the benefit of the persons employed by it in connection with its undertakings in India, the moneys relatable to the employees —

(i) whose services are transferred by or under this Act to the Central Government or the successor Government company, or

(ii) who are in receipt of pension or other pensionary benefits immediately before the appointed day,

shall, out of the moneys standing, on that day, to the credit of such provident, superannuation, welfare or other fund stand transferred to, and vested in, the Central Government or the successor Government company, as the case may be, free from any trust that may have been constituted by Caltex (India) in respect thereof.

(2) The moneys which stand transferred, under sub-section (1), to the Central Government or the successor Government company shall be dealt with by the Central Government or that company, as the case may be, in such manner as may be prescribed.

(3) The successor Government company shall, as soon as may be after the undertakings of Caltex

(India) in India become vested in it, constitute, in respect of the moneys and other assets which are transferred to, and vested in, it under this section, one or more trusts having objects as similar to the objects of the existing trusts, as in the circumstances may be practicable, so, however, that the rights and interests of the beneficiaries of the trust referred to in sub-section (1) are not, in any way, prejudiced or diminished.

(4) Where all the moneys and other assets belonging to an existing trust are transferred to, and vested in, the Central Government or the successor Government company under this section, the trustees of such trust shall, as from the date of such vesting, stand discharged from the trust except as respects things done or omitted to be done before the date of such vesting.

CHAPTER VI

Miscellaneous

13. *Effect of Act on other laws.* — The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act or in any decree or order of any court, tribunal or other authority.

14. *Duty to deliver possession of properties, etc.* — (1) Where any property, appertaining to any undertaking of Caltex (India) in India has been transferred to, and vested in, the Central Government or the successor Government company under this Act,—

(a) every person in whose possession, custody or control any such property may be, shall, on a demand by the Central Government or the successor Government company, as the case may be, deliver the property to the Central Government or the successor Government company, as the case may be, forthwith;

(b) any person who, immediately before such vesting, has, in his possession, custody or control, any books, documents or other papers relating to the undertakings of Caltex (India) in India, shall be liable to account for the said books, documents and papers to the Central Government or the successor Government company, as the case may be, and shall deliver them up to the Central Government or that company or to such person as the Central Government or that company may authorise in this behalf.

(2) Without prejudice to the other provisions contained in this section, it shall be lawful for the Central Government or the successor Government company to take all necessary steps for taking possession of all properties, which have been transferred to, and vested in, it under this Act.

15. *Contracts to continue unless terminated by Central Government.* — (1) Every contract entered into by Caltex (India) for any service, sale or supply in India, and in force immediately before the appointed day, shall, unless terminated under sub-section (2) within a period of two years from the appointed day, continue to be of full force and effect against or in favour of the Central Government or, as the case may be, the successor Government company.

(2) The Central Government may, if it is satisfied that any contract referred to in sub-section (1) is unduly onerous or has been entered into in bad faith or is detrimental to the interests of that Government or the successor Government company, as the case may be, by order in writing, either terminate such contract or make such alterations or modifications therein as it may think fit:

Provided that the Central Government shall not terminate any contract or make any alteration or modification therein except after giving to the parties to the contract, a reasonable opportunity of being heard and except after recording in writing, its reasons for such termination, alteration or modification, as the case may be.

16. *Use of designs, trade marks, etc., belonging to Caltex Petroleum or Caltex (India).* — Nothing in this Act shall be construed to entitle Caltex Oil Refining or the Central Government or the successor Government company to use —

(a) any designs, trade marks, trade names (including the name Caltex or any part thereof), styles of labelling, belonging to Caltex Petroleum or Caltex (India), after the expiry of a period of twelve months from the appointed day; and

(b) any station decor (including distinctive colour schemes) belonging to Caltex Petroleum or Caltex (India), after the expiry of a period of twenty-four months from the appointed day.

17. *Penalties.* — Any person who, —

(a) having in his possession, custody or control any property forming part of any undertaking of Caltex (India) in India wrongfully withholds such property from the Central Government or the successor Government company; or

(b) wrongfully obtains possession of, or retains, any property forming part of any undertaking of Caltex (India) in India; or

(c) wilfully withholds or fails to furnish to the Central Government or the successor Government company or any person specified by the Central Government or that company, any books, documents or other papers relating to any undertaking of Caltex (India) in India which may be in his possession, custody or control; or

(d) fails to deliver to the Central Government or the successor Government company, any assets, books of account, registers or other documents in his possession, custody or control relating to any undertaking of Caltex (India) in India; or

(e) wrongfully removes or destroys any property forming part of any undertaking of Caltex (India) in India; or

(f) wrongfully uses any property forming part of any undertaking of Caltex (India) in India,

shall be punishable with imprisonment for a term which may extend to two years, or with fine which may extend to ten thousand rupees, or with both.

18. *Offences by companies.* — (1) Where an offence under this Act has been committed by a company, every person who, at the time the offence was committed was in charge of, and was responsible to, the company for the conduct of the business of the

company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment, if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where any offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation. — For the purposes of this section —

(a) "company" means any body corporate and includes a firm or other association of individuals; and

(b) "director", in relation to a firm, means a partner in the firm.

19. *Protection of action taken in good faith.* — No suit, prosecution or other legal proceeding shall lie against the Central Government or the successor Government company or any of its officers or other employees for anything which is in good faith done or intended to be done under this Act.

20. *Cognizance of offences.* — Notwithstanding anything contained in the Code of Criminal Procedure, 1973, no court shall take cognizance of any offence against this Act except on a complaint, in writing, made by the Central Government or any officer authorised in this behalf by that Government. 2 of 1974.

21. *Indemnity.* — Every officer of the Central Government and every officer or other employee of the successor Government company shall be indemnified by the Central Government or the successor Government company, as the case may be, against all losses and expenses incurred by him in, or in relation to, the discharge of his duties under this Act except such as have been caused by his own wilful act or default.

22. *Power to remove difficulties.* — If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order, not inconsistent with the provisions of this Act, remove the difficulty:

Provided that no such order shall be made after the expiry of a period of two years from the appointed day.

23. *Power to make rules.* — (1) The Central Government may, by notification, make rules to carry out the provisions of this Act.

(2) Every rule made by the Central Government under this Act shall be laid, as soon as may be after it is made, before each House of Parliament while it is in session for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

24. *Repeal and saving.* — (1) The Caltex [Acquisition of Shares of Caltex Oil Refining (India) Limited and of the Undertakings in India of Caltex (India) Limited] Ordinance, 1976, is hereby repealed. Ord. 15 of 1976.

(2) Notwithstanding such repeal, anything done or any action taken under the Ordinance so repealed shall be deemed to have been done or taken under the corresponding provision of this Act.

THE SCHEDULE

[See section 10]

1. The amount specified in sub-section (1) of section 10 shall be deemed to correspond to fourteen million, five hundred and sixty thousand dollars (hereafter in this Schedule referred to as the principal amount).

2. The amount referred to in the foregoing paragraph and the interest due thereon shall be paid in instalments in accordance with the provisions of the Table below, namely —

Table

Date of Payment	Instalments in dollars		
	Principal amount	Interest	Total
(i) 31-3-1977	10,080,000	—	10,080,000
(ii) 31-3-1978	1,120,000	642,419	1,762,419
(iii) 31-3-1979	1,120,000	268,800	1,388,800
(iv) 31-3-1980	1,120,000	179,200	1,299,200
(v) 31-3-1981	1,120,000	89,600	1,209,600

Explanation. — In this Schedule "dollar" means the unit of currency in the United States of America.

Notification

LD/2707/III/77

The following Central Act The Disputed Elections (Prime Minister and Speaker) Act, 1977 (Act No. 16 of 1977) which was recently passed by the Parliament and assented to by the President of India on 18-4-1977 and published in the Gazette of India Part II, Section I dated 19-4-1977 is hereby republished for general information of the public.

B. S. Subbanna, Under Secretary (Law).

Panaji, 6th June, 1977.

The Disputed Elections (Prime Minister and Speaker) Act, 1977

ARRANGEMENT OF SECTIONS

CHAPTER I

Preliminary

Sections

1. Short title and commencement.
2. Definitions.

CHAPTER II

Authorities for disputed elections

3. Petitions in respect of disputed elections.
4. Authority to try a petition.

CHAPTER III

Presentation of petitions in respect of disputed elections

5. Presentation of petition.
6. Parties to the petition.
7. Contents of petition.
8. Relief that may be claimed by the petitioner.
9. Procedure on receiving petitions.

CHAPTER IV

Trial of petitions

10. Trial of petitions.
11. Procedure before the Authority.
12. Secrecy of voting not to be infringed.
13. Answering of criminating questions and certificate of indemnity.
14. Expenses of witnesses.
15. Recrimination when seat claimed.
16. Decision of the authority.
17. Other orders to be made by the Authority.
18. Grounds for declaring election to be void.
19. Grounds for which a candidate other than the returned candidate may be declared to have been elected.
20. Communication of orders of the Authority.
21. Costs.
22. Orders of Authority to be final.
23. Effect of orders of Authority.

CHAPTER V

Miscellaneous

24. Withdrawal and abatement of petitions.
25. Payment of costs out of security deposits and return of such deposits.
26. Execution of orders as to costs.
27. Power to make rules.
28. Repeal and saving.

The Dispute Elections (Prime Minister and Speaker) Act, 1977

AN

ACT

to provide for Authorities to deal with disputed elections to Parliament in the case of Prime

Minister and Speaker of the House of the People and for matters connected therewith.

Be it enacted by Parliament in the Twenty-eighth Year of the Republic of India as follows: —

CHAPTER I

Preliminary

1. *Short title and commencement.* — (1) This Act may be called the Disputed Elections (Prime Minister and Speaker) Act, 1977.

(2) It shall be deemed to have come into force on the 3rd day of February, 1977.

2. *Definitions.* — In this Act, unless the context otherwise requires, —

(a) “Authority” means an Authority constituted under section 4 for the trial of a petition;

(b) “candidate” means a person who has been or claims to have been duly nominated as a candidate at any election;

(c) “costs” means all costs, charges and expenses of, or incidental to, a trial of a petition under this Act;

(d) “election” means an election in the case of Prime Minister or in the case of Speaker;

(e) “election in the case of Prime Minister” means an election to either House of Parliament of a person who holds the office of Prime Minister at the time of such election or is appointed as Prime Minister after such election;

(f) “election in the case of Speaker” means an election to the House of the People of a person who holds the office of Speaker at the time of such election or is chosen as the Speaker for that House after such election;

(g) “petition” means a petition calling in question an election;

(h) “prescribed” means prescribed by rules made under this Act;

(i) “returned candidate” means a candidate whose name has been published under section 67 of the Representation of the People Act, 1951, as duly elected at an election in the case of Prime Minister or, as the case may be, an election in the case of Speaker; 43 of 1951.

(j) each of the expressions defined in the Representation of the People Act, 1951, but not defined in this Act shall have the same meaning as in that Act. 43 of 1951.

CHAPTER II

Authorities for disputed elections

3. *Petitions in respect of disputed elections.* — No election shall be called in question except by a petition presented in accordance with the provisions of this Act.

4. *Authority to try a petition.* — (1) Every petition shall be tried by an Authority, constituted for the purpose by the Central Government by notification in the Official Gazette.

(2) The Authority shall consist of a single member, who is a Judge of the Supreme Court, to be nominated in this behalf by the Chief Justice of India.

(3) If for any reason a vacancy occurs in the office of member aforesaid, the Chief Justice shall, as soon as practicable, nominate a person to fill the vacancy, and thereupon the trial of the petition shall be continued as if that member had been the Authority from the commencement of the trial of such petition:

Provided that the Authority may, if it thinks fit, recall and re-examine any of the witnesses already examined.

CHAPTER III

Presentation of petitions in respect of disputed elections

5. *Presentation of petition.*—(1) A petition calling in question any election may be presented on one or more of the grounds specified in sub-section (1) of section 100 and section 101 of the Representation of the People Act, 1951, to the Election Commission by any candidate at such election or any elector within forty-five days from, but not earlier than, the date of election of the returned candidate, or if there are more returned candidates than one at the election and the dates of their election are different, the last of those dates: 43 of 1951.

Provided that a petition calling in question the election of a person who does not hold the office of Prime Minister or, as the case may be, Speaker of the House of the People at the time of such election and who is appointed or chosen to that office after such election but before the expiry of the time for presenting such election petition, may be presented within forty-five days from the date on which such person was appointed as the Prime Minister or chosen as the Speaker of the House of the People.

Explanation.—In this sub-section, "elector" means a person who was entitled to vote at the election to which the petition relates, whether he has voted at such election or not.

(2) A petition shall be deemed to have presented to the Election Commission when it is delivered to the Election Commission or to such other officer as may be appointed by it in this behalf—

(a) by the person making the petition, or

(b) by a person authorised in writing in this behalf by the person making the petition.

(3) Every petition shall be accompanied by as many copies thereof as there are respondents mentioned in the petition and one more copy for the use of the Election Commission, and every such copy shall be attested by the petitioner under his own signature to be a true copy of the petition.

(4) At the time of presenting a petition, the petitioner shall deposit with the Election Commission in such manner as may be prescribed a sum of two thousand rupees as security for costs.

(5) The Authority trying a petition may at any time during the course of the trial of the petition

call upon the petitioner to give such further security for costs as it may direct.

(6) No person shall be entitled to be joined as a respondent to a petition under sub-section (3) of section 10 unless he has given such security for costs as the Authority may direct.

6. *Parties to the petition.*—A petitioner shall join as respondents to his petition—

(a) where the petitioner, in addition to claiming a declaration that the election of all or any of the returned candidates is void, claims a further declaration that he himself or any other candidate has been duly elected, all the contesting candidates other than the petitioner, and where no such further declaration is claimed, all the returned candidates; and

(b) any other candidate against whom allegations of any corrupt practice are made in the petition.

7. *Contents of petition.*—(1) A petition—

(a) shall contain a concise statement of the material facts on which the petitioner relies;

(b) shall set forth full particulars of any corrupt practice that the petitioner alleges, including as full a statement as possible of the names of the parties alleged to have committed such corrupt practice and the date and place of the commission of each such practice; and

(c) shall be signed by the petitioner and verified in the manner laid down in the Code of Civil Procedure, 1908, for the verification of pleadings: 5 of 1908.

Provided that where the petitioner alleges any corrupt practice, the petition shall also be accompanied by an affidavit in the prescribed form in support of the allegation of such corrupt practice and the particulars thereof.

(2) Any schedule or annexure to the petition shall also be signed by the petitioner and verified in the same manner as the petition.

8. *Relief that may be claimed by the petitioner.*—A petitioner may, in addition to claiming a declaration that the election of all or any of the returned candidates is void, claim a further declaration that he himself or any other candidate has been duly elected.

9. *Procedure on receiving petitions.*—(1) The Election Commission shall, as soon as may be after the receipt of a petition under section 5, forward it to the Authority for trying the petition.

(2) Where more petitions than one have been received under section 5 in respect of the same election the Election Commission shall forward them to the Authority and such Authority may, in its discretion, try them separately or in one or more groups.

CHAPTER IV

Trial of petitions

10. *Trial of petitions.*—(1) Subject to any rules made in this behalf, the Authority for the trial of any petition shall hold the trial at New Delhi.

(2) The Authority shall dismiss the petition —

(a) if the petition has not been presented within the period specified in sub-section (1) of section 5;

(b) if the petition does not comply with the provisions of sub-section (3) or sub-section (4) of section 5 or section 6.

Explanation. — An order dismissing a petition under this sub-section shall be deemed to be an order made under clause (a) of section 16.

(3) Any candidate not already a respondent to a petition shall, upon application made by him to the Authority within fourteen days from the date of commencement of the trial and subject to any order as to security for costs which may be made by the Authority, be entitled to be joined as a respondent.

Explanation. — For the purposes of this sub-section and of section 15, the trial of a petition shall be deemed to commence on the date fixed for the respondents to appear before the Authority and answer the claim or claims made in the petition.

(4) The Authority may, upon such terms as to costs and otherwise as it may deem fit, allow the particulars of any corrupt practice alleged in the petition to be amended or amplified in such manner as may in its opinion be necessary for ensuring a fair and effective trial of the petition, but shall not allow any amendment of the petition which will have the effect of introducing particulars of a corrupt practice not previously alleged in the petition.

(5) The trial of a petition shall, so far as is practicable consistently with the interests of justice in respect of the trial, be continued from day to day until its conclusion, unless the Authority finds the adjournment of the trial beyond the following day to be necessary for reasons to be recorded.

(6) Every petition shall be tried as expeditiously as possible and endeavour shall be made to conclude the trial within six months from the date of commencement of the trial.

11. Procedure before the Authority. —

(1) Subject to the provisions of this Act and of any rules made thereunder, every petition shall be tried by the Authority, as nearly as may be, in accordance with the procedure applicable under the Code of Civil Procedure, 1908 to the trial of suits; 5 of 1908.

Provided that the Authority shall have the discretion to refuse, for reasons to be recorded in writing, to examine any witness or witnesses, if it is of the opinion that the evidence of such witness or witnesses is not material for the decision of the petition or that the party tendering such witness or witnesses is doing so on frivolous grounds or with a view to delay the proceedings.

(2) For the purposes of any such trial, the Authority shall have all the powers of a Civil Court while trying a suit under the Code of Civil Procedure, 1908, in respect of the following matters, namely: — 5 of 1908.

(a) summoning and enforcing the attendance of any person and examining him on oath;

(b) requiring the discovery and production of any document;

(c) receiving evidence on affidavits;

(d) requisitioning any public record or copy thereof from any court or office;

(e) issuing commissions for the examination of witnesses or documents;

(f) such other matters as may be prescribed.

(3) The provisions of the Indian Evidence Act, 1872, shall, subject to the provisions of this Act, be deemed to apply in all respects to the trial of a petition. 1 of 1872.

(4) Any proceeding before the Authority shall be deemed to be a judicial proceeding within the meaning of section 193 of the Indian Penal Code. 45 of 1860.

12. *Secrecy of voting not to be infringed.* — No witness or other person shall be required to state for whom he has voted at an election.

13. *Answering of criminating questions and certificate of indemnity.* — (1) No witness shall be excused from answering any question as to any matter relevant to a matter in issue in the trial of a petition upon the ground that the answer to such question may criminate or may tend to criminate him, or that it may expose or may tend to expose him to any penalty or forfeiture:

Provided that —

(a) a witness, who answers truly all questions which he is required to answer shall be entitled to receive a certificate of indemnity from the Authority; and

(b) an answer given by a witness to a question put by or before the Authority shall not, except in the case of any criminal proceeding for perjury in respect of the evidence, be admissible in evidence against him in any civil or criminal proceeding.

(2) When a certificate of indemnity has been granted to any witness, it may be pleaded by him in any court and shall be a full and complete defence to or upon any charge under Chapter IXA of the Indian Penal Code or Part VII of the Representation of the People Act, 1951, arising out of the matter to which such certificate relates, but it shall not be deemed to relieve him from any disqualification in connection with an election imposed by this Act or any other law. 45 of 1860. 43 of 1951.

14. *Expenses of witnesses.* — The reasonable expenses incurred by any person in attending to give evidence before the Authority may be allowed by it to such person, and shall, unless the Authority otherwise directs, be deemed to be part of the costs.

15. *Recrimination when seat claimed.* — (1) When in a petition a declaration that any candidate other than the returned candidate has been duly elected is claimed, the returned candidate or any other party may give evidence to prove that the election of such candidate would have been void if he had

been the returned candidate and a petition had been presented calling in question his election:

Provided that the returned candidate or such other party, as aforesaid shall not be entitled to give such evidence unless he has, within fourteen days from the date of commencement of the trial, given notice to the Authority of his intention to do so and has also given the security and the further security referred to in sub-sections (4), (5) and (6) respectively of section 5.

(2) Every notice referred to in sub-section (1) shall be accompanied by the statement and particulars required by section 7 in the case of a petition and shall be signed and verified in like manner.

16. *Decision of the Authority.* — At the conclusion of the trial of a petition the Authority shall make an order —

- (a) dismissing the petition; or
- (b) declaring the election of all or any of the returned candidates to be void; or
- (c) declaring the election of all or any of the returned candidates to be void and the petitioner or any other candidate to have been duly elected.

17. *Other orders to be made by the Authority.* — (1) At the time of making an order under section 16, the Authority shall also make an order —

- (a) where any charge is made in the petition of any corrupt practice having been committed at the election, recording —
 - (i) a finding whether any corrupt practice has or has not been proved to have been committed at the election, and the nature of that corrupt practice; and
 - (ii) the names of all persons, if any, who have been proved at the trial to have been guilty of any corrupt practice and the nature of that practice; and
- (b) fixing the total amount of costs payable and specifying the persons by and to whom costs shall be paid:

Provided that a person who is not a party to the petition shall not be named in the order under sub-clause (ii) of clause (a) unless —

- (a) he has been given notice to appear before the Authority and to show cause why he should not be so named; and
- (b) if he appears in pursuance of the notice, he has been given an opportunity of cross-examining any witness who has already been examined by the Authority and has given evidence against him, of calling evidence in his defence and of being heard.

(2) In this section and in section 18, the expression "agent" has the same meaning as in section 123 of the Representation of the People Act, 1951. 43 of 1951.

18. *Grounds for declaring election to be void.* — (1) Subject to the provisions of sub-section (2), if the Authority is of opinion —

- (a) that on the date of his election a returned candidate was not qualified,

or was disqualified, to be chosen to fill the seat under the Constitution or the Representation of the People Act, 1951 or this Act or the Government of Union Territories Act, 1963; or 43 of 1951. 20 of 1963.

(b) that any corrupt practice has been committed by a returned candidate or his election agent or by any other person with the consent of a returned candidate or his election agent; or

(c) that any nomination has been improperly rejected; or

(d) that the result of the election, in so far as it concerns the returned candidate, has been materially affected —

(i) by the improper acceptance of any nomination, or

(ii) by any corrupt practice committed in the interests of the returned candidate by an agent other than his election agent, or

(iii) by the improper reception, refusal or rejection of any vote or the reception of any vote which is void, or

(iv) by any non-compliance with the provisions of the Constitution or of this Act or of any rules or orders made under this Act,

the Authority shall declare the election of the returned candidate to be void.

(2) If in the opinion of the Authority a returned candidate has been guilty by an agent, other than his election agent, of any corrupt practice but the Authority is satisfied —

(a) that no such corrupt practice was committed at the election by the candidate or his election agent, and every such corrupt practice was committed contrary to the orders, and without the consent, of the candidate or his election agent;

(b) that the candidate and his election agent took all reasonable means for preventing the commission of corrupt practices at the election; and

(c) that in all other respects the election was free from any corrupt practice on the part of the candidate or any of his agents,

then the Authority may decide that the election of the returned candidate is not void.

19. *Grounds for which a candidate other than the returned candidate may be declared to have been elected.* — If any person who has lodged a petition has, in addition to calling in question the election of the returned candidate, claimed a declaration that he himself or any other candidate has been duly elected and the Authority is of opinion —

(a) that in fact the petitioner or such other candidate received a majority of the valid votes; or

(b) that but for the votes obtained by the returned candidate by corrupt practices the petitioner or such other candidate would have obtained a majority of the valid votes,

the Authority shall after declaring the election of the returned candidate to be void declare the petitioner or such other candidate, as the case may be, to have been duly elected.

20. *Communication of orders of the Authority.* — The Authority shall, as soon as may be after the conclusion of the trial of a petition, intimate the substance of the decision to the Election Commission and the Speaker or the Chairman, as the case may be, of the House of Parliament and, as soon as may be thereafter, shall send to the Election Commission an authenticated copy of the decision.

21. *Costs.* — Costs shall be in the discretion of the Authority:

Provided that where a petition is dismissed under clause (a) of section 16, the returned candidate shall be entitled to the costs incurred by him in contesting the petition and accordingly the Authority shall make an order for costs in favour of the returned candidate.

22. *Orders of Authority to be final.* — No order made by an Authority under this Act shall be called in question in any court.

23. *Effect of orders of Authority.* — (1) An order made by an Authority under this Act shall take effect as soon as it is pronounced by the Authority.

(2) Where by an order under section 16 the election of a returned candidate is declared to be void, acts and proceedings in which that returned candidate has, before the date thereof, participated as a member of Parliament or, as the Prime Minister or as the Speaker of the House of the People shall not be invalidated by reason of that order, nor shall such candidate be subjected to any liability or penalty on the ground of such participation.

CHAPTER V

Miscellaneous

24. *Withdrawal and abatement of petitions.* — The provisions of sections 109 to 116 (both inclusive) of the Representation of the People Act, 1951, relating to withdrawal and abatement of election petitions shall, so far as may be, apply in relation to withdrawal and abatement of petitions under this Act subject to the modifications that the references therein to an election petition, High Court and petitioner shall be construed as references to a petition under this Act, the Authority for hearing such petition and the petitioner in respect of such petition respectively.

43 of 1951.

25. *Payment of costs out of security deposits and return of such deposits.* — (1) If in any order as to costs under the provisions of this Act there is a direction for payment of costs by any party to any person, such costs shall, if they have not been already paid, be paid in full, or so far as possible, out of the security deposit and the further security deposit, if any, made by such party under this Act on an application made in writing in that behalf within a period of one year, from the date of such order to the Election Commission by the person in whose favour the costs have been awarded.

(2) If there is any balance left of any of the said security deposits after payment under sub-section (1) of the costs referred to in that sub-section, such balance, or where no costs have been awarded or no application as aforesaid has been made within the said period of one year, the whole of the said security deposits may, on an application made in that behalf in writing to the Election Commission by the person by whom the deposits have been made, or if such person dies after making such deposits, by the legal representative of such person, be returned to the said person or to his legal representative, as the case may be.

26. *Execution of orders as to costs.* — Any order as to costs under the provisions of this Act may be produced before the principal civil court of original jurisdiction within the local limits of whose jurisdiction any person directed by such order to pay any sum of money has a place of residence or business or where such place is within a presidency-town before the court of small causes having jurisdiction there, and such court shall execute the order or cause the same to be executed in the same manner and by the same procedure as if it were a decree for the payment of money made by itself in a suit:

Provided that where any such costs or any portion thereof may be recovered by an application made under sub-section (1) of section 25, no application shall lie under this section within a period of one year from the date of such order unless it is for the recovery of the balance of any costs which has been left unrealised after an application has been made under that sub-section owing to the insufficiency of the amount of the security deposits referred to in that sub-section.

27. *Power to make rules.* — (1) The Central Government may make rules for carrying out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:

(a) the deposit or further deposit to be made by the petitioner as security for the costs;

(b) the appointment of officers and other employees for assisting the Authorities in the discharge of their functions and the conditions of service of such officers and other employees;

(c) the custody of deposits made under this Act, the payment of costs out of such deposits on an application made under section 25 and other matters relating to the disposal of such applications;

(d) the fees, if any, payable in respect of any petition or application under this Act;

(e) any other matter which has to be prescribed by or provided for by rules made under this Act.

(3) Every rule made by the Central Government under this Act shall be laid, as soon as may be after it is made, before each House of Parliament while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the

session immediately following the session, or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

28. Repeal and saving. — (1) The Disputed Elections (Prime Minister and Speaker) Ordinance, 1977, is hereby 4 of 1977. repealed.

(2) Notwithstanding such repeal, anything done or any action taken under the provisions of the said Ordinance shall be deemed to have been done or taken under the corresponding provisions of this Act.